IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 5754 of 2007

Moreshwar Daji Mhatre ..Petitioner

vs.

Baban Daji Mhatre ...Respondent

Shri S.A.Sawant for petitioner.
Shri R.D.Suryavanshi for respondent.

CORAM: S.C.DHARMADHIKARI J.
19th NOVEMBER, 2007

P.C.

1. Heard Shri Sawant appearing for the petitioner and Shri Suryavanshi appearing for the respondent. Perused the concurrent findings and conclusions of the Courts below at the prima facie stage holding that the respondent is entitled to a temporary injunction to protect his possession qua the suit house and atleast to the extent of the Northern portion thereof with amenities of the toilet and bathroom.

2. The submission of Shri Sawant is that the Courts below and atleast the lower Appellate Court ought to have considered the very relevant piece of evidence even at this prima facie stage. In his submission, the lower Appellate Court was obliged in law to permit the petitioner/original appellant to produce a copy of the plaint

from the record of competent civil court in Reg.Civil Suit No.89 of 2006. This document would have gone to conclusively prove that there is no substance in the case of the respondent/original plaintiff that there was oral partition.

3. In my view, the lower Appellate Court has exercised its discretion on sound judicious principles. Disallowing the request of the petitioner to produce the document at a prima facie stage, does not mean that the Court has not shut out the production thereof completely. To my mind, it has also kept the doors for the petitioner open to apply for modification of the order to the Trial Court on the basis of such materials and documents as are permissible to be produced in law.

4. To my mind, the request of the petitioner's Advocate to produce the copy of the plaint in Reg.Civil Suit No.89 of 2006 cannot be said to be such as would warrant interference under Article 227 of the Constitution of India. The Trial Court and the Lower Appellate Court have relied upon other materials, at the prima facie stage, apart from the statement of Gulab Raghunath

Mhatre on affidavit. The Trial Court's injunction must necessarily be construed as operating so far as the plaintiff's share in the suit house is concerned. It need not be clarified that if the plaintiff is in possession of the suit house or portion or the Northern side thereof so also enjoys the amenities of toilet and bathroom, he shall be allowed to do so by the defendant and the defendant shall not restrain the peaceful use and occupation thereof by the plaintiff during the pendency of the suit. Such being the effect of the interlocutory order of the Trial Court as confirmed in appeal, this is not a fit case for interference under Article 227 of the Constitution of India, more so, when no error apparent is disclosed. The petition is dismissed. However, all observations shall be treated as tentative and prima facie and will not influence the Trial Court while deciding the suit on its own merits and in accordance with law. Further, the petitioner would be at liberty to apply for modification of the Trial Court's order in case the Trial does not commence within a period of 3 months from today. Such application will be dealt with on its own merits and in accordance with law uninfluenced by the observations made in this order.

(S.C.DHARMADHIKARI J .)